

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

CRIMINAL NO. 18-20255

vs.

HON. VICTORIA A. ROBERTS

OFFENSE: 18 U.S.C. § 1349

**D-1 GARY TENAGLIA,

Defendant.**

**MAXIMUM PENALTIES:
Up to 20 Years Imprisonment
Up to \$250,000 fine
Supervised Release: 5 years**

RULE 11 PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, defendant
GARY TENAGLIA and the government agree as follows:

1. Guilty Plea

A. Count of Conviction

The defendant will enter a plea of guilty to Count One of the Information,
which charges him with Wire Fraud Conspiracy, in violation of 18 U.S.C. §1349.

B. Elements of Offense

The elements of wire fraud conspiracy that the government would need to
prove beyond a reasonable doubt at trial are:

1. Two or more persons conspired, or agreed, to commit wire fraud;

2. The defendant knowingly and voluntarily joined the conspiracy; and
3. The defendant had the intent to help commit wire fraud.

The elements of wire fraud are:

1. The defendant devised a scheme or artifice to defraud;
2. The defendant made a material misrepresentation or omission in furtherance of the scheme;
3. The defendant used or caused the use of interstate wire communications in furtherance of the scheme; and
4. The defendant intended to deprive a victim of money or property.

C. Factual Basis for Guilty Plea

The following facts are a sufficient and accurate basis for the defendant's guilty plea:

During all relevant times, the defendant was the owner of Envision Engineering & Maintenance, LLC ("Envision"). Between in or about May 2011 through 2014, Envision had contracts with the Wayne County Airport Authority ("WCAA") to provide maintenance for the Blue Deck parking structure at Detroit Metropolitan Airport. The contract involved, among other services, the removal of snow and ice.

Beginning in 2012, and continuing through 2014, the defendant, along with two other individuals, agreed to commit wire fraud by executing a scheme to defraud

the WCAA by charging for the application of thousands of pounds of a deicing salt called “NAAC,” which, in fact, the defendant’s company Envision did not apply. The fraudulent charges, which were paid in full by the WCAA to Envision, totaled approximately \$1,500,000. An internal WCAA audit began in the spring of 2014. On May 2, 2014, in order to further his fraud scheme, the defendant sent an email from his office in the Eastern District of Michigan that traveled interstate. That email included a false invoice purporting to show that Envision had purchased NAAC deicer from another company, when Envision had not done so. The audit concluded on June 30, 2014, and revealed the fraudulent charges for the NAAC. Prior to being advised of the existence of a federal investigation, the defendant began repaying an agreed sum of \$550,000 to the WCAA.

2. Sentencing Guidelines

A. Standard of Proof

The Court will find sentencing factors by a preponderance of the evidence.

B. Agreed Guideline Range

There are no sentencing guideline disputes. Except as provided below, the parties recommend that the defendant’s guideline range is **27 to 33 months**, as set forth on the attached worksheets. If the Court finds:

1. That defendant’s criminal history category is higher than reflected on the attached worksheets, or

2. that the offense level should be higher because, after pleading guilty, defendant made any false statement to or withheld information from his probation officer; otherwise demonstrated a lack of acceptance of responsibility for his offense; or obstructed justice or committed any crime,

and if any such finding results in a guideline range higher than **27 to 33 months**, the higher guideline range becomes the **agreed range**. If the Court finds that defendant is a career offender, an armed career criminal, or a repeat and dangerous sex offender as defined under the sentencing guidelines or other federal law, and that finding is not already reflected in the attached worksheets, this paragraph does not authorize a corresponding increase in the agreed range.

Neither party may take a position concerning the applicable guidelines that is different than any position of that party as reflected in the attached worksheets, except as necessary to the Court's determination regarding subsections 1) and 2), above.

3. Sentence

The Court will impose a sentence pursuant to 18 U.S.C. § 3553, and in doing so must consider the sentencing guideline range.

A. Imprisonment

Pursuant to Rule 11(c)(1)(C), the sentence of imprisonment in this case may not exceed the top of the guideline range as determined by Paragraph 2B, that is,

33 months.

B. Supervised Release

A term of supervised release follows the term of imprisonment. The Court must impose a term of supervised release, which in this case is up to five years. The agreement concerning imprisonment described above in Paragraph 3A does not apply to any term of imprisonment that results from any later revocation of supervised release.

C. Special Assessment

The defendant will pay a special assessment of \$100 at the time of sentencing.

D. Fine

The parties agree that the fine will be no more than the maximum amount of \$250,000.

E. Restitution

The Court shall order restitution to every identifiable victim of the defendant's offense.

F. Forfeiture

PBR mj/k
The defendant agrees to the imposition of a forfeiture judgment in the amount of \$950,000 million to the United States, pursuant to 18 U.S.C. § 981 (a)(1) (C), 21 U.S.C. §853(p), 28 U.S.C. §2461(c). Further, the defendant agrees to release, remise and discharge plaintiff the United States of America in any of its agencies

involved in this matter, including the Federal Bureau of Investigation, the United States Marshal's service, the United States attorney's office, and their agents, officers and employees, past and present, from all claims or causes of action claimant and his agents, officers, employees, as signees and/or successors in interest have, may have had or may have on account of the events or circumstances giving rise to the above-captioned action.

PMR With respect to the agreement to entry a forfeiture judgment in the amount of *\$950,000 m/k* *2AR* *\$950,000 m/k* \$1,000,000, the defendant agrees to the entry of one or more orders of forfeiture of his interest in any of his assets up to the value of \$1,000,000 such property upon application by the United States two years from the criminal judgment is entered.

Further, defendant agrees to liquidate through a private sale a real property located at 5350 Brewster, Oakland Township, Michigan, 48306 (Brewster Property) in order to satisfy his forfeiture obligation. Further the parties agree that the net proceeds from the sale of the Brewster Property shall first be applied toward any outstanding restitution obligation.

The government agrees not to execute on, or seek to enforce the forfeiture judgment for two (2) years from the date that the criminal judgment is entered against defendant Gary Tenaglia in this case. If the full amount of the restitution is paid within said two-year period under this stipulation, the government agrees to seek an amendment to the Preliminary Order of Forfeiture terminating the forfeiture money

judgment against defendant Gary Tenaglia and providing that the defendant Gary Tenaglia is obligated to forfeit a remaining amount of \$100,000 to fully satisfy his forfeiture obligation.

In the event that the net proceeds of the sale of the Brewster property exceeds the outstanding restitution, defendant Gary Tenaglia agrees that any excess up to \$100,000 shall be used to satisfy the \$100,000 forfeiture in the amended order of forfeiture. In the event, the net proceeds of the sale of the Brewster property exceeds both the outstanding restitution and the \$100,000 forfeiture, defendant Gary Tenaglia shall be entitled to any proceeds over and above the outstanding restitution and the \$100,000 forfeiture.

In the event defendant Gary Tenaglia pays the entire outstanding restitution and the \$100,000 forfeiture within the two years of the entry of the judgment, the forfeiture judgment shall be vacated.

The parties agree that net proceeds of the sale is defined as gross proceeds from the sale less valid liens and encumbrances of record, real property taxes due upon sale, reasonable real estate commissions and reasonable closing costs that can be corroborated.

Once the private sale occurs, the parties **STIPULATE** to the entry of an order pursuant to Local Rule 67.1 directing the Clerk of the Court to receive a deposit in the amount of the outstanding restitution obligation. Further the parties stipulate to

the entry of an order directing United States Marshal service to receive a deposit in the amount of \$100,000 from Gary Tenaglia to satisfy the defendant's forfeiture obligations. With respect to the agreement to entry a forfeiture judgment in the amount of \$1,000,000, the defendant agrees to the entry of one or more orders of forfeiture of his interest in any of his assets up to the value of \$1,000,000 such property upon application by the United States two years from the date the criminal judgment is entered.

Any offers to purchase the Brewster property and any closings are subject to approval by the government. The government shall not unreasonably withhold such approval.

Except as otherwise provided below, the government agrees to forgo any other enforcement actions against any other property owned by Gary Tenaglia, or any assets acquired with the net proceeds of the sale of the Brewster property.

In entering into this agreement with respect to forfeiture, the defendant knowingly, voluntarily, and intelligently waives any challenge to the above-described forfeiture based upon the excessive fines clause of the Eighth Amendment to the United States Constitution. The defendant further agrees to hold the United States, its agents and employees harmless from any claims whatsoever in connection with the seizure and forfeiture of property covered by this plea agreement.

The defendant agrees that he will cooperate with United States by taking

whatever steps are necessary to deliver clear title to the \$1 million to the United States and will execute such legal documents as may be required to transfer title to the United States by taking whatever steps are necessary to ensure that the \$1 million is not disbursed, hidden, wasted or otherwise made unavailable for forfeiture. If any other person or entity has or claims any interest in such property, defendant will assist in obtaining a release of interest from any such other person or entity. If the net proceeds of the sale of the Brewster property exceeds the outstanding restitution and the \$100,000 forfeiture amount, defendant hereby agrees to execute a cashier's check made payable to United States Marshal's service in the amount of the outstanding restitution and a second cashier's check in the amount of \$100,000 made payable to the United States Marshal's Service.

Defendant Gary Tenaglia agrees not to contest, or assist anyone else in contesting, the forfeiture of any property sought for the forfeiture to be applied toward this forfeiture judgment. In the event that the Brewster property is not sold by defendant Gary Tenaglia within two (2) two years from the date the judgment is entered against him in this criminal case, the government, at its option, may amend the preliminary order forfeiture to provide that the United States Marshal's service, or its designate, may liquidate the Brewster property to satisfy the forfeiture judgment.

In the event the United States Marshal's Service, liquidates the Brewster

property and the net proceeds exceeds the outstanding restitution and the additional \$100,000 forfeiture specified above, the forfeiture judgment shall be amended to provide that defendant shall receive any excess net proceeds over the outstanding restitution and the additional \$100,000 forfeiture.

4. Use of Withdrawn Guilty Plea

If the Court allows the defendant to withdraw his guilty plea for a “fair and just reason” pursuant to Fed. R. Crim. P. 11(d)(2)(B), the defendant waives his rights under Fed. R. Evid. 410, and the government may use his guilty plea, any statement made under oath at the change-of-plea hearing, and the factual basis statement in this plea agreement, against him in any proceeding.

5. Other Charges

If the Court accepts this agreement, the government will not bring any additional charges based on the factual basis detailed above.

6. Each Party’s Right to Withdraw from This Agreement

The government may withdraw from this agreement if the Court finds the correct guideline range to be different than is determined by Paragraph 2B. The defendant may withdraw from this agreement, and withdraw his guilty plea, if the Court decides to impose a sentence higher than the maximum amount allowed by Paragraph 2. This is the only reason for which the defendant may withdraw from this agreement. The Court shall advise the defendant that if he does not withdraw his

guilty plea under this circumstance, the Court may impose a sentence greater than the maximum allowed by Paragraph 2.

7. Appeal Waiver

The defendant waives any right he may have to appeal his conviction on any grounds. If the defendant's sentence of imprisonment does not exceed 33 months, the defendant also waives any right he may have to appeal his sentence on any grounds. If the defendant's sentence of imprisonment is at least 27 months, the government waives any right it may have to appeal the defendant's sentence.

8. Consequences of Withdrawal of Guilty Plea or Vacation of Conviction

If defendant is allowed to withdraw his guilty plea or if any conviction entered pursuant to this agreement is vacated, the Court shall, on the government's request, reinstate any charges that were dismissed as part of this agreement. If additional charges are filed against defendant within six months after the date the order vacating defendant's conviction or allowing him to withdraw his guilty plea becomes final, which charges relate directly or indirectly to the conduct underlying the guilty plea or to any conduct reflected in the attached worksheets, defendant waives his right to challenge the additional charges on the ground that they were not filed in a timely manner, including any claim that they were filed after the limitations period expired.

9. Parties to Plea Agreement

Unless otherwise indicated, this agreement does not bind any government agency except the United States Attorney's Office for the Eastern District of Michigan.

10. Scope of Plea Agreement

This agreement, which includes all documents that it explicitly incorporates, is the complete agreement between the parties. This agreement supersedes all other promises, representations, understandings and agreements between the parties concerning the subject matter of this plea agreement that were made at any time before the guilty plea is entered in court. Thus, no oral or written promises made by the government to defendant or to the attorney for the defendant at any time before defendant pleads guilty are binding except to the extent they have been explicitly incorporated into this agreement.


Notwithstanding the previous paragraph, if defendant has entered into a proffer agreement in writing or a cooperation agreement in writing with the government, this plea agreement does not supersede or abrogate the terms of any such prior written agreement.

This agreement also does not prevent any civil or administrative actions against defendant, or any forfeiture claim against any property, by the United States or any other party.

11. Acceptance of Agreement by Defendant

This plea offer expires unless it has been received, fully signed, in the Office of the United States Attorney by 5:00 P.M. on June 29, 2018. The government reserves the right to modify or revoke this offer at any time before defendant pleads guilty.

MATTHEW SCHNEIDER
United States Attorney




DAVID A. GARDEY
Assistant United States Attorney
Chief, Public Corruption Unit



R. MICHAEL BULLOTTA
Assistant United States Attorney

Dated: June 27, 2018

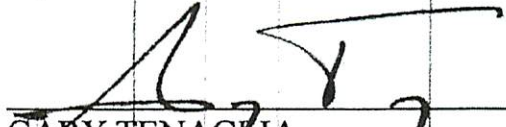
By signing below, defendant acknowledges that he has read (or been read) this entire document, understands it, and agrees to its terms. He also acknowledges that he is satisfied with his attorney's advice and representation. Defendant agrees that he has had a full and complete opportunity to confer with his lawyer, and has had all of his questions answered by his lawyer.



MARK KRIGER
Attorney for Defendant

6-29-18

Dated



GARY TENAGLIA
Defendant

6-29-18

Dated

Defendant:	Gary Tenaglia	Count:	One
Docket No.:	18-CR-	Statute(s):	18 U.S.C. §1343

WORKSHEET A (Offense Levels)

Complete one Worksheet A for each count of conviction (taking into account relevant conduct and treating each stipulated offense as a separate count of conviction) before applying the multiple-count rules in U.S.S.G. ch. 3, pt. D. However, in any case involving multiple counts of conviction, if the counts of conviction are all “closely related” to each other within the meaning of U.S.S.G. § 3D1.2(d), complete only a single Worksheet A.

1. BASE OFFENSE LEVEL AND SPECIFIC OFFENSE CHARACTERISTICS (U.S.S.G. ch. 2)

<u>Guideline Section</u>	<u>Description</u>	<u>Levels</u>
2B1.1(a)(1)	Base Offense Level	7
2B1.1(b)(1)(H)	Loss exceeded \$550,000	14

2. ADJUSTMENTS (U.S.S.G. ch. 3, pts. A, B, C)

<u>Guideline Section</u>	<u>Description</u>	<u>Levels</u>

Defendant:	Gary Tenaglia	Count:	One
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3. ADJUSTED OFFENSE LEVEL

Enter the sum of the offense levels entered in Items 1 and 2. If this Worksheet A does not cover every count of conviction (taking into account relevant conduct and treating each stipulated offense as a separate count of conviction), complete one or more additional Worksheets A and a single Worksheet B.

21

If this is the only Worksheet A, check this box and skip Worksheet B.

✓

If the defendant has no criminal history, check this box and skip Worksheet C.

✓

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WORKSHEET D (Guideline Range)

1. (COMBINED) ADJUSTED OFFENSE LEVEL

Enter the adjusted offense level entered in Item 3 of Worksheet A or the combined adjusted offense level entered in item 8 of Worksheet B.

21

2. ADJUSTMENT FOR ACCEPTANCE OF RESPONSIBILITY (U.S.S.G. § 3E1.1)

-3

3. TOTAL OFFENSE LEVEL

Enter the difference between Items 1 and 2.

18

4. CRIMINAL HISTORY CATEGORY

Enter "I" if the defendant has no criminal history. Otherwise, enter the criminal history category entered in Item 6 of Worksheet C.

I

**5. CAREER OFFENDER/CRIMINAL LIVELIHOOD/ARMED CAREER
CRIMINAL/DANGEROUS SEX OFFENDER (U.S.S.G. ch. 4, pt. B)**

- a. Total Offense Level: If the career offender provision (U.S.S.G. § 4B1.1), the criminal livelihood provision (U.S.S.G. § 4B1.3), the armed career criminal provision (U.S.S.G. § 4B1.4), or the dangerous sex offender provision (U.S.S.G. § 4B1.5) results in a total offense level higher than the total offense level entered in Item 3, enter the higher offense level total.

- b. Criminal History Category: If the career offender provision (U.S.S.G. § 4B1.1), the armed career criminal provision (U.S.S.G. § 4B1.4), or the dangerous sex offender provision (U.S.S.G. § 4B1.5) results in a criminal history category higher than the criminal history category entered in Item 4, enter the higher criminal history category.

6. GUIDELINE RANGE FROM SENTENCING TABLE (U.S.S.G. CH. 5, PT. A)

Enter the guideline range in the Sentencing Table (*see* U.S.S.G. ch. 5, pt. A) produced by the total offense level entered in Item 3 or 5.a and the criminal history category entered in Item 4 or 5.b.

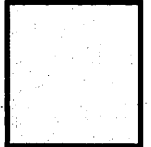
27-33

months

Defendant:	Gary Tenaglia	Count:	One
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7. STATUTORY RESTRICTIONS ON OR SUPERSESSION OF GUIDELINE RANGE

If the maximum sentence authorized by statute is below, or a minimum sentence required by statute is above, the guideline range entered in Item 6, enter either the guideline range as restricted by statute or the sentence required by statute. (*See* U.S.S.G. § 5G1.1.) If the sentence on any count of conviction is required by statute to be consecutive to the sentence on any other count of conviction, explain why.



months

Defendant:	Gary Tenaglia	Count:	One
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WORKSHEET E (Authorized Guideline Sentences)

1. PROBATION

a. Imposition of a Term of Probation (U.S.S.G. § 5B1.1)

☒

1. Probation is not authorized by the guidelines (minimum of guideline range \geq 10 months or statute of conviction is a Class A or a Class B felony). If this box is checked, go to Item 2 (Split Sentence).

☐

2. Probation is authorized by the guidelines (minimum of guideline range = zero months).

☐

3. Probation is authorized by the guidelines, provided the court imposes a condition or combination of conditions requiring intermittent confinement, community confinement, or home detention satisfying the minimum of the guideline range (minimum of guideline range $>$ 0 months but \leq 9 months).

b. Length of Term of Probation (U.S.S.G. § 5B1.2)

☐

1. At least 1 year but not more than 5 years (total offense level \geq 6)

☐

2. No more than 3 years (total offense level $<$ 6).

c. Conditions of Probation (U.S.S.G. § 5B1.3)

2. SPLIT SENTENCE (U.S.S.G. § 5C1.1(C)(2), (D)(2))

☒

a. A split sentence is not authorized (minimum of guideline range = 0 months or \geq 15 months).

☐

b. A split sentence is authorized (minimum of guideline range $>$ 0 months but \leq 12 months). The court may impose a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention for imprisonment, provided that at least one-half of the minimum of the guideline range is satisfied by imprisonment (if the minimum of the guideline range is 10 or 12 months), or that at least one month is satisfied by imprisonment (if the minimum of the guideline range is 1, 2, 3, 4, 6, 8, or 9 months). The authorized length of the term of supervised release is set forth below in Item 4.b.

3. IMPRISONMENT (U.S.S.G. CH. 5, PT. C)

A term of imprisonment is authorized by the guidelines if it is within the applicable guideline range (entered in Item 6 of Worksheet D). (See U.S.S.G. § 5C1.1.)

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4. SUPERVISED RELEASE (U.S.S.G. ch 5., pt. D)

a. Imposition of a Term of Supervised Release (U.S.S.G. § 5D1.1)

The court must impose a term of supervised release if it imposes a term of imprisonment of more than one year, or if it is required to do so by statute. The court may impose a term of supervised release if it imposes a term of imprisonment of one year or less.

b. Length of Term of Supervised Release (U.S.S.G. § 5D1.2)

☒

1. At least 2 years but not more than 5 years, where the count of conviction is a Class A or a Class B felony, i.e., an offense carrying a maximum term of imprisonment ≥ 25 years.

☐

2. At least 1 year but not more than 3 years, where the count of conviction is a Class C or a Class D felony, i.e., an offense carrying a maximum term of imprisonment ≥ 5 years but < 25 years.

☐

3. 1 year, where the count of conviction is a Class E felony or a Class A misdemeanor, i.e., an offense carrying a maximum term of imprisonment > 6 months but < 5 years.

☐

4. The statute of conviction requires a minimum term of supervised release of years.

c. Conditions of Supervised Release (U.S.S.G. § 5D1.3)

The court must impose certain conditions of supervised release and may impose other conditions of supervised release.

5. RESTITUTION (U.S.S.G. § 5E1.1)

☒

1. The court *must* order full restitution to the victim(s) of the offense(s) of conviction. (See 18 U.S.C. §§ 3556, 3663A, 3664.) The court will determine who the victims are and their restitution amounts.

☐

2. The court *must* order full restitution to the victim(s) of the offense(s) of conviction. (See 18 U.S.C. §§ 3556, 3663A, 3664) The parties agree that full restitution is \$.

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- ☐ 3. The parties agree that the court *may* order restitution to the victim(s) of the offense(s) of conviction in any amount up to and including \$_____. (See 18 U.S.C. §§ 3663(a)(3), 3664.)
- ☐ 4. The parties agree that the court *may also* order restitution to persons other than the victim(s) of the offense(s) of conviction in any amount up to and including \$_____. (See 18 U.S.C. §§ 3663(a)(1)(A), 3663A(a)(3), 3664.)
- ☐ 5. Restitution is not applicable.

6. FINE (U.S.S.G. § 5E1.2)

a. Fines for Individual Defendants

The court must impose a fine unless “the defendant establishes that he [or she] is unable to pay and is not likely to become able to pay any fine.” (See U.S.S.G. § 5E1.2(a).) Generally, the fine authorized by the guidelines is limited to the range established in the Fine Table. (See U.S.S.G. § 5E1.2(b).) However, there are exceptions to this general rule. (See U.S.S.G. § 5E1.2(b), (c)(4).)

b. Fine Range from Fine Table (U.S.S.G. § 5E1.2(c)(3))

Minimum Fine
\$10,000

Maximum Fine
\$100,000

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7. SPECIAL ASSESSMENT(S) (U.S.S.G. § 5E1.3)

The court must impose a special assessment on every count of conviction. The special assessments for individual defendants are:

- \$100.00 for every count charging a felony (\$400 for a corporation),
- \$25.00 for every count charging a Class A misdemeanor (\$125 for a corporation),
- \$10.00 for every count charging a Class B misdemeanor (\$50 for a corporation), and
- \$5.00 for every count charging a Class C misdemeanor or an infraction (\$25 for a corporation).

The defendant must pay a special assessment or special assessments in the total amount of \$100.

8. FORFEITURE (U.S.S.G. § 5E1.4)
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Assets of the defendant will be forfeited.

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Assets of the defendant will not be forfeited.

9. ADDITIONAL APPLICABLE GUIDELINES, POLICY STATEMENTS, AND STATUTES

List any additional applicable guideline, policy statement, or statute.

10. UPWARD OR DOWNWARD DEPARTURE (U.S.S.G. ch. 5, pts. H & K)

List any applicable aggravating or mitigating circumstance that might support a term of imprisonment above or below the applicable guideline range.